

Senate Bill 2170 (Committee on Revenue and Taxation) Chapter 647
Property Tax Omnibus Bill

***Removed Property.
Statute of Limitations – Escape Assessments
Supplemental Assessments - Exemptions
Documented Vessels
State Lands Commission
State Assessee Appeals - Filing Dates
Private Contractors***

This bill contains Board of Equalization sponsored provisions to:

- 1. Restore time limitation on escape assessments that may be levied for prior tax years on an unreported change in ownership, except in cases of fraud or changes in ownership involving property owned by a legal entity. (§§75.11 and 532).**
- 2. Restore language that was inadvertently deleted by SB 2237 (Stats. 1998, Chap. 591) related to permitting a partial exemption to be granted on late filed claims for the veterans', homeowners', and disabled veterans' exemptions on a supplemental assessment. (§75.21)**
- 3. Simplify the petition filing deadlines for appeals of assessments and allocations of state-assessed properties. (§§731, 732, 733, 746, 748, 749, 758, and 759)**
- 4. Establish safeguards to ensure the confidentiality of taxpayer confidential information when consultants are hired by county assessors to perform appraisal work. (§674)**

It also contains, non- Board sponsored provisions to

- 5. Clarify that the time for filing property assessment appeals is "within 60 days of the date of mailing printed on the notice or the postmark date therefor, whichever is later." §75.31 (State Bar - Taxation Section)**
- 6. Add the State Lands Commission to the list of agencies who may receive appraisal data in possession of the assessor. §408 (State Lands Commission)**
- 7. Clarify that for property damaged by disaster, misfortune or calamity, the new base year value excludes the portion of the previous value attributable to the portion of the property that is destroyed or removed. §51 (Assessors' Association)**
- 8. Strike out obsolete language relating to taxation of documented vessels. §227 (Assessors' Association)**

Statute of Limitations
Escape Assessments and Supplemental Assessments
Revenue and Taxation Code Sections 75.11 and 532

This bill reinstates the prior limitation on the number of prior tax years for which escape assessments can be issued except in two instances where property has been underassessed or escaped assessment, following a change in ownership.

- 1. The first is where the penalty provided for in Section 503 must be added to the escape assessment. (Section 503 provides that if any taxpayer or the taxpayer's agent through a fraudulent act or omission causes, or if any fraudulent collusion between the taxpayer or the taxpayer's agent and the assessor or any of the assessor's deputies causes, any taxable tangible property to escape assessment in whole or in part, or to be underassessed, the assessor shall assess the property in the lawful amount and add a penalty of 75 percent of the additional assessed value so assessed.)**
- 2. The second is where a change in ownership statement, is not filed pursuant to Section 480.1 where there is a change in control of a legal entity under Section 64(c)¹ or pursuant to Section 480.2 where there is a change in ownership of a legal entity under Section 64(d).²**

¹ Section 64(c) states “(c) (1) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control through direct or indirect ownership or control of more than 50 percent of the voting stock of any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, including any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, the purchase or transfer of that stock or other interest shall be a change of ownership of the real property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

(2) On or after January 1, 1996, when an owner of a majority ownership interest in any partnership obtains all of the remaining ownership interests in that partnership or otherwise becomes the sole partner, the purchase or transfer of the minority interests, subject to the appropriate application of the step-transaction doctrine, shall not be a change in ownership of the real property owned by the partnership.”

² Section 64(d) provides that “If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

These two exceptions serve to keep the substantive intent of 1995 legislation concerning the unlimited escape assessment of certain properties that are not reappraised to current market level following a change in ownership.

Law Prior To Amendment:

Under current law, the statute of limitations on levying escape assessments on a change in ownership does not commence until a “change in ownership statement” (COS) or “preliminary change in ownership report” (PCOR) is filed. Consequently, if a taxpayer (the transferee) does not file a COS or PCOR, there is no limit on the number of prior tax years subject to collection for back taxes via an “escape assessment.” Upon discovery of an unreported change in ownership, escape assessments are issued for each year after the change in ownership occurred.

Background:

Prior to January 1, 1996, the maximum number of years that escape assessments on an unreported change in ownership could ever be levied for previous tax years was eight. This eight year period was limited to instances in which a change in ownership had occurred but either a change in ownership statement (COS) or a preliminary change in ownership report (PCOR) had not been filed.

Chapter 544 of the Statutes of 1995 (Senate Bill 1726, Kopp) revised the escape assessment provisions to essentially require that an escape assessment be levied for every year that property is underassessed whenever a change in ownership is not reported. Specifically, SB 1726 deleted the former reference to an eight year time period found in Revenue and Taxation Code Section 531.2 and instead substantively recast the provisions in Revenue and Taxation Code Section 532 to provide that the statute of limitations on levying escapes does not commence until a COS is filed. Consequently, if a COS is not filed, then there is no limit on the number of years subject to the collection of back taxes. Because of the manner in which the legislation was drafted, the change in law permitting unlimited escape assessments is retroactive as well as prospective. Under the recast provisions, any taxpayer who did not file a COS or PCOR is at risk of receiving tax bills for up to 17 years of back taxes (for a change in ownership occurring on or after March 1, 1975, which resulted in an increase in value for the 1982-83 fiscal year) whether or not they filed a document evidencing a change in ownership with the county recorder. Furthermore, absent legislative change, in future years the potential number of years subject to back taxes will be unlimited.

Under current law, regardless of the number of years that back taxes are billed, taxpayers will have, at most, only a four year period in which to pay them under an

A transfer of shares or other ownership interests that results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.”

installment payment plan. As assessors have begun to implement SB 1726, those taxpayers affected have contacted legislative staff members to request relief. Assessors have reported instances of being required to levy property taxes for up to 15 years of back taxes.

SB 1726 was introduced because of alleged fraudulent activity to thwart the reassessment of a major high-rise property in downtown San Francisco to current market level. This transaction was complex, involved transfers among legal entities, appears to have been structured to avoid reassessment, and apparently involved an agreement among some of the participants not to inform the assessor of the transaction. The decision to not file a COS or PCOR was one of many elements in this transaction.

Comment:

Purpose. To restore the maximum number of years that back taxes in the form of escape assessment resulting from an unreported change in ownership may be collected to eight for property owned by individuals (required to file under Section 480). Escape assessments would remain unlimited in instances where fraud was involved or where a legal entity change in ownership under Section 64(c) or 64(d) occurred and a change in ownership statement was not filed under Section 480.1 or 480.2.

Welfare Exemption Supplemental Assessments

Revenue and Taxation Code Section 75.21

This bill restores language unintentionally deleted by amendments made last year by SB 2237. In addition, it recasts the original intent of SB 2237 by adding subdivision (f) to Section 75.21 to provide that no additional exemption claim shall be required to be filed until the next succeeding lien date in the case in which a supplemental assessment results from a change in ownership of property where the purchaser of the property owns and uses or uses, as the case may be, other property that has been granted the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, or welfare exemption on either the current roll or the roll being prepared and the property purchased is put to the same use. These amendments also specify that: 1) if the non-profit organization does not file a timely application for exemption on the next succeeding lien date then the provisions of paragraph (1) of subdivision (c), which permit a partial exemption for late-filed exemptions, will apply and 2) in all other instances when a supplement assessment results from a change in ownership, then a claim would be required to be filed pursuant to subdivision (c) of Section 75.21 to receive an exemption on the supplemental assessment (for example, a non-profit organization which purchases property eligible for a property tax exemption for the first time). These amendments are necessary because SB 2237 did not address the situation where an entity does not file an exemption on the next succeeding lien date and did not give entities the benefit of a partial exemption when a late filing is made as prior law had permitted.

Law Prior To Amendment:

In 1998, the Board of Equalization and the Assessors' Association jointly sponsored a provision contained in SB 2237 (Ch. 591, Senate Committee on Revenue and Taxation) to eliminate the need for non-profit organizations to claim a property exemption on a supplemental assessment resulting from a change in ownership. Since most non-profit organizations must reclaim their property tax exemption annually, in many cases it is burdensome to require them to file again mid-year to extend a property tax exemption to property newly acquired during the year. Instead, such organizations would file for an exemption on their supplemental assessment when they otherwise filed for an exemption on "next lien date" when they applied for their annual exemption. The amendments made by SB 2237 inadvertently deleted language related to the veterans', homeowners', and disabled veterans' exemptions, which the bill was not intended to affect. Assessors' offices have contacted the Board concerning the administrative difficulties that the deletion of this language has created and have noted the need for legislative cleanup.

Background:

Prior to SB 2237, the law provided similar streamlined filing in the case where a supplemental assessment results from the completion of *new construction* on property that had previously been granted exemption. In this situation, an exemption claim did not have to be filed until the next succeeding lien date. The new construction exception provision was sponsored by the Board of Equalization in 1994 (SB 1431, Ch. 1222, Senate Committee on Revenue and Taxation) to (1) eliminate the unnecessary burden placed on organizations to file an exemption claim every time they made an improvement to their properties and (2) eliminate the unnecessary administrative duties for assessors in processing these claims.

Comment:

Purpose. To restore the language unintentionally deleted. In addition, it would recast the original intent of SB 2237.

State Assessee Appeals

Revenue and Taxation Code Sections 731, 732, 733, 746, 748, 749, 758 and 759

Assessed Value Appeals

With respect to appeals of the assessed value of state-assessed property, this bill:

- **Eliminates the filing of declarations of intent to petition for reassessment on both unitary and nonunitary property.**
- **Replaces the 20-day deadline for filing declarations of intent and the 30-day deadline for filing petitions for reassessment with statutory petition filing dates of July 20 for unitary assessments and September 20 for nonunitary assessments, and with a single 50-day deadline for escape assessments.**

- **Requires mailing of notice of nonunitary value by the last day of July, rather than the last day of June.**

Allocation Appeals

With respect to appeals of the allocation of assessed value, this bill:

- **Requires the Board to mail the allocated assessed values of an assessee's unitary property not later than June 15, rather than "upon or prior to the completion of the assessment roll" (July 31).**
- **Replaces the 5-day deadline for filing petitions for correction of an allocated assessment with a statutory petition filing date of July 20.**
- **Increases the time of notice of hearing on petitions for correction of an allocated assessment from five days to ten working days.**
- **Requires that petitions for correction of an allocated assessment be determined by December 31, rather than by July 31.**

Law Prior To Amendment:

Assessed Value Appeals

Each year the Board of Equalization determines the fair market value of each state assessee's property. The Board then sends a notice to each state assessee indicating the value set by the Board. Under current law, if a state assessee wishes to appeal the value, they may either

- 1) file a "declaration of intent to petition for reassessment" within 20 days of receiving the value notice and then file the actual "petition for reassessment" 30 days after the date of filing the declaration of intent, or
- 2) if a declaration of intent to petition the Board for reassessment is not filed, then file a petition for reassessment within 20 days of receiving the value notice.

Allocation Appeals

After the Board of Equalization determines the fair market value of each state assessee's unitary property, the Board must then allocate the unitary value determined among the various counties in California where the state assessee owns property. The local county auditor applies the countywide tax rate area to the county's share of the total value of the state assessee's unitary property to determine the amount of taxes owed. The county auditor then uses statutory formulas to allocate the taxes collected to the numerous local agencies located in the county. Under current law, a state assessee may appeal the Board's allocation of unitary value to each county.

Comments:

1. **Purpose.** To simplify the petition filing deadlines for appeals of assessments and allocations of state-assessed properties, and conform the law to current Board assessment and notice practices.
2. **Unlike the appeals filing period for local assessees, that is consistent from year to year for all property owners (i.e. July 2 through September 15), the filing deadline for state assessees varies.** The date depends upon (1) the date the Board mails the value notice and (2) whether the state assessee first files a declaration of intent. This bill simplifies the filing dates by establishing dates certain that do not change every year, eliminating a confusing two-part calculation to establish the filing deadline, and also eliminating potential confusion or dispute over precisely when a filing period calculation commences.
3. **Detailed Summary of Changes.**
 - This bill conforms the filing dates for petitions for reassessment of unitary properties and petitions for correction of allocated assessments with respect to that unitary assessment.
 - This bill eliminates the need to file a “declaration of intent to petition for reassessment” and instead simply require that, with respect to unitary property, a petition for reassessment be filed by July 20, and with respect to nonunitary property, a petition for reassessment be filed by September 20. The July 20 date generally corresponds with the typical filing deadline for petitions for reassessment of unitary property under current law when a declaration of intent is filed, (20 days + 30 days). Similarly, the September 20 date for petitions for reassessment of nonunitary property generally corresponds with the typical filing deadline for those assessments.
 - This bill creates a filing deadline that is date certain each year and thereby eliminates potential confusion and dispute over filing deadlines.
 - This bill requires the Board to mail the allocated assessed values of an assessee’s unitary property not later than June 15, rather than “upon or prior to the completion of the assessment roll” (July 31) as current law provides. It would also replace the current 5-day deadline for filing petitions for correction of an allocated assessment with a statutory petition filing date of July 20. This would make the filing dates for “petitions for correction of *allocated* assessments” the same as the filing dates for petitions for reassessment of unitary property (July 20). Identical dates will provide a measure of certainty for taxpayers as well as the Board.
 - This bill increases the time of notice of hearing on petitions for correction of an allocated assessment from five days to ten working days. The increase in the time of notice of hearing conforms petitions for correction of allocated assessments with other petitions.

- This bill requires that petitions for correction of an allocated assessment be determined by December 31, rather than by July 31. The determination of these petitions by December 31 is consistent with petitions for redetermination of unitary and nonunitary value, and with current practices of the Board.
- The July 20 date in this bill generally corresponds with the result under the current two-part calculation for petitions for reassessment of unitary value.
- The change in the date for mailing notices of nonunitary value in this bill corresponds with current Board practices of valuing nonunitary property in late July, when the Board roll is adopted. The September 20 date generally corresponds with the result under the current two-part calculation for petitions for reassessment of nonunitary value.
- The mailing of allocated assessed values by mid-June set forth in this bill is consistent with current practices, and provides sufficient notice for taxpayers to meet the July 20 petition filing deadline. The increase in the time of notice of hearing conforms petitions for correction of allocated assessments with other petitions. The determination of such petitions by December 31 is consistent with petitions for redetermination of unitary and nonunitary value, and with current practices of the Board.

Appraisal Consultants

Revenue and Taxation Code Section 674

This provision:

- **Requires that a contractor maintain the confidentiality of assessee information and records, as provided in Sections 408, 451, and 481, that is obtained in performance of the contract.**
- **Requires that initial requests for information and records from an assessee be made by the assessor. A contractor may request additional information or records, if needed, but only if authorized by the assessor in writing.**
- **Prohibits a contractor from providing appraisal data in his or her possession to the assessor or a contractor of another county who is not a party to the contract. (Such information may be exchanged from assessor to assessor as provided in Section 408.)**
- **Prohibits a contractor from retaining information contained in, or derived from, an assessee's confidential information and records after the conclusion, termination, or nonrenewal of the contract.**
- **Requires the contractor to, within 90 days of the conclusion, termination, or nonrenewal of the contract:**

- **Purge and return to the assessor any assessee records, whether originals, copies, or electronically stored, provided by the assessor or otherwise obtained from the assessee.**
- **Provide a written declaration to the assessor that the contractor has completed these tasks.**
- **Requires all contracts to incorporate these provisions in the contract using language that is prescribed by the State Board of Equalization.**

Law Prior To Amendment:

Some county assessors hire appraisal consultants for specialized properties such as oil, gas and mining properties. Currently, however, there is no statute that specifically requires consultants who obtain confidential information from taxpayers in the process of performing appraisal work for county assessors to maintain the confidentiality of this information.

The law requires that assessors keep certain information confidential. Revenue and Taxation Code Section 408 provides that homeowners' exemption claims and any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor are not open to public inspection. (The assessor is required to keep only a limited number of records, such as the assessment roll and a list of property transfers in the county.) Sections 451 and 481 provide that all information requested by the assessor or furnished in the property statement and change in ownership information shall be "held secret" by the assessor. Neither Section 408, Section 451 nor Section 481 have a penalty associated with its violation.

Background:

The Construction Materials Association of California (CMAC) recently requested that the Board adopt a regulation specifying the minimum requirements of a contract between an assessor and any outside consultants. One issue raised in the request for a regulation was the protection of confidential taxpayer information where contractors are used. As a result of these discussions, the Board agreed to sponsor legislation to ensure the protection of taxpayer information by specifically extending the confidentiality provisions of Section 408, 451 and 481 as well as provide for the return of taxpayer records once the contract has ended. At the time the Board adopted this proposal, both the CMAC and the California Assessors' Association requested modifications to the proposal. Staff met with both parties and reached agreement from both Associations on the specific language contained in this proposal.

Comments:

1. **Purpose.** To impose on independent appraisal consultants the same confidentiality requirements currently imposed on assessors to ensure the confidentiality of taxpayer information.
2. **Key Amendments.** The August 24 amendments delete the provisions that would have made violation of these requirements a misdemeanor. The provisions which would have made it unlawful for a consultant to disclose assessee confidential information and the prohibition on the retention of records after a contract has expired was based on language contained in similar laws with respect to taxpayer confidentiality for the various tax and fee programs administered by the Board: Sections 7153 and 7056 (Sales & Use Tax), Section 9255 (Fuel Tax), Section 30455 (Cigarette Tax), Section 32455 (Alcoholic Beverage), Section 43651 (Solid Waste), Section 45982 (Solid Waste), Section 55381 (Fee Collections), and Section 60609 (Diesel Fuel).
3. **Other than the general confidentiality requirement for “licensed” appraisers in Business and Professions Code Section 11328, there is currently no statute expressly prohibiting public disclosure of taxpayer information and records obtained by independent appraisal consultants under contract with assessors.** The measure extends to taxpayers whose properties are being appraised by independent appraisal consultants under contract the same protection from public disclosure under Sections 408, 451, and 481 that pertains to properties appraised directly by the assessor and his/her employees.
4. **This measure specifically requires that at the conclusion of the contract work, independent appraisal consultants must return to the assessor any assessee records provided by the assessor during the course of the contract.** To this extent, the proposal prevents consultants’ retention of taxpayers’ records.
5. **The measure promotes statewide uniformity in the application of these confidentiality requirements by mandating the Board of Equalization to prescribe the confidentiality language to be included in assessor/consultants contracts.** This will eliminate any disparity among counties and assessors.